



9200/2673

500.28503CC5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#8

Applicant: H. MANO, et al
Serial No.: 09/625,542
Filed: July 25, 2000
For: MULTI-TONE DISPLAY DEVICE
Group: 2673
Examiner: A. Mengistu

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**PETITION TO WITHDRAW ERRONEOUS HOLDING
OF ABANDONMENT AND REQUEST FOR RECONSIDERATION**

MS Petition

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

September 16, 2003

Sir:

Applicants have learned after receiving an October 22, 2002 Supplemental Notice of Allowability, that a Notice of Allowance was issued on March 15, 2002 and that a Notice of Abandonment dated September 13, 2002 in connection with the above-identified application had been issued. The Notice of Abandonment indicated that the application is abandoned in view of "Applicants' failure to pay the required Issue Fee within the statutory period of three (3) months from the mailing date of March 15, 2002 of the Notice of Allowance".

Applicants note that the Notice of Abandonment was premature in that it was issued on September 13, 2002 rather than September 15, 2002 and that the Supplemental Notice of Allowability was late in that it was issued well after September 15, 2002 the date the Issue Fee was due.

Applicants further note that the March 15, 2002 Notice of Allowance and the Notice of Abandonment were mailed to an incorrect address, namely 191 Pennsylvania Avenue, N.W., Suite 600, Washington, DC 20006 not Applicants' Attorneys' current address of 1300 North 17th Street, Suite 1800, Arlington, VA 22209. Applicants' Attorneys' never had an office at 191 Pennsylvania Ave, N.W., Suite 600, Washington, D.C. 20006. Applicants' Attorneys' did however have an office at 1919 Pennsylvania Ave, N.W., Suite 600, Washington, DC 20006. Copies of the March 15, 2002 Notice of Allowance and the September 13, 2002 Notice of Abandonment indicating the incorrect address are attached.

Applicants submit that even if the March 15, 2002 Notice of Allowance was an attempt to mail the March 15, 2002 Notice of Allowance to Applicants' Attorneys' previous address, then the March 15, 2002 Notice of Allowance would never had reached Applicants' Attorneys' at their previous address nor their current address of 1300 North 17th Street, Suite 1800, Arlington, VA 22209.

Applicants note that the October 22, 2002 Supplemental Notice of Allowability was sent to Applicants current address and is puzzled as to why such Supplemental Notice of Allowability was mailed to Applicants current address when the March 15, 2002 Notice of Allowance was mailed to an incorrect address. After numerous discussions with the United States Patent and Trademark Office regarding the present application Applicants filed on October 25, 2002 a Change of Correspondence Address to urge the United States Patent and Trademark Office update their records to correspond to the previously indicated mailing of address of 1300 North 17th Street, Suite 1800, Arlington, VA 22209 as per the Customer No. 020457 as per the Utility Patent Application Transmittal filed on July

25, 2000. However, such Change of Correspondence Address was filed after the mailing date of the October 22, 2002 Supplemental Notice of Allowability.

Applicants submit that for the reasons discussed below, that the original mailing of the March 15, 2002 Notice of Allowance was never received at the current address of the current offices of the undersigned Attorneys nor was it ever received at the previous address of the previous offices of the undersigned attorneys. Accordingly, pursuant to MPEP §711.03(c) and the Commissioner's Notice in 1156 OG 53 (copy attached herewith), it is respectfully petitioned that the holding of abandonment be withdrawn and that a new period for responding to the Notice of Allowance be reset so as to allow payment of the Issue Fee filed concurrently herewith, i.e., based on the rationale set forth in Delgar, Inc. v. Schuyler, 172 USPQ 513 (DDC 1971). Authorization is hereby given to charge the Issue Fee to the deposit account of Antonelli, Terry, Stout & Kraus Account No. 01-2135 (500.28503CC5). More particularly, as reasons for granting of such request, the following facts are respectfully submitted.

In the offices of the undersigned attorneys, all mail which is received from the U.S. patent and Trademark Office (USPTO) is given directly to a docketing department. Responsive to receipt of such mail, as a first safeguard, the docketing department maintains a computer database which stores information relating to the filing of papers in the USPTO, receipt of papers from the USPTO, and due dates for responding to papers received from the USPTO. The data in the computer database is backed up on a magnetic tape at the end of each work day.

Attached hereto is a printout of pertinent data in the computer database for the present application as it existed on or about the maximally extended date. The attached printout shows data fields entitled "Action", "Base Due" and "Final", which will be referred to below.

When a paper which must be responded to is received from the USPTO, the docketing department enters the mailing date of such paper in the "Base" data field.

For the Notice of Allowance mailed March 15, 2002, the expiration date of a non-extendable statutory period for paying the Issue Fee was three months from the Notice of Allowance, i.e., June 15, 2002. Therefore, if the Notice of Allowance mailed March 15, 2002, had been received in the offices of the undersigned attorney, the docketing department would have added "Issue Fee" to the "Action" field; entered the date "June 15, 2002" in the corresponding "Due" field and the date "June 15, 2002" in the "Final" field. However, as can be seen from the attached printout, this was not done, indicating that the Notice of Allowance mailed March 15, 2002, was never received in the offices of the undersigned attorneys.

Furthermore, as a second safety cross check against the computer database, the docketing department maintains a handwritten master docket book which has one page for each day of the year.

After data relating to a USPTO paper has been entered into the computer database, the docketing department handwrites data relating to such paper into the master docket book on the page corresponding to the expiration date of a maximally-extended statutory period for response to the paper. As discussed

above, for the Notice of Allowance dated March 15, 2002, the expiration date of a maximally-extended statutory period for response was June 15, 2002, for Payment of the Issue Fee.

Attached hereto is a copy of the page of the master docket book for June 15, 2002.

When a Notice of Allowance is received, the docketing department enters the following information in the master docket book on the page corresponding to the expiration date of the maximally-extended statutory periods for response: the docket number of the application to which the USPTO action pertains, the last name of the first-named inventor of the application, the serial number of the application, the notation "Issue Fee", and the initials of the attorney to whom the application is assigned.

Therefore, if the Notice of Allowance dated March 15, 2002 had been received in the offices of the undersigned attorneys, the attached copy of the page of the master docket book for June 15, 2002 would show an entry with the following data: docket number 500.28503CC5, the last name MANO, serial number 09/625,542, the notation "Issue Fee", and the initials "CIB". However, as can be seen from the attached copy of the page of the master docket book for June 15, 2002, such an entry does not appear. It is respectfully submitted that the absence of corresponding entries on such master docket book pages further evidences the fact that the Notice of Allowance mailed March 15, 2002 was never received in the offices of the undersigned attorneys.

As evidence that the docketing procedures described above were followed at the time the Notice of Allowance was mailed, it is noted that the attached copy

of the page of the master docket book for June 15, 2002 includes entries corresponding to ****Thirty-two (32)**** applications other than the present application. Further, it is submitted that the entries on the page of the master docket book for June 15, 2002, as discussed above, indicate that the docketing procedures were followed for ****Thirty-two (32)**** applications other than the present application about the time the Notice of Allowance mailed March 15, 2002 should have been received.

As noted above, the correspondence address of the undersigned attorneys is 1300 N. Seventeenth Street, Suite 1800, Arlington, VA 22209. Applicants also submit that the present application was filed as a continuation of application Serial No. 09/188,901, filed November 10, 1998, now U.S. Patent No. 6,191,765 and that at the time of filing such continuation application the Utility Patent Application Transmittal at "Item 17" indicated Applicants correspondence address Customer No. as 020457. The United States Patent and Trademark Office is required to use such Customer No. as an indication of Applicants address. Such was not done in this case.

Applicants submit that being that the Customer No. 020457 was indicated on the transmittal at item 17, the United States Patent and Trademark Office was properly informed of the current mailing address of Applicants' Attorneys, the undersigned. Thus, the mailing of the Notice of Allowance and Notice of Abandonment were improperly mailed by the United States Patent and Trademark Office to an incorrect address.

Applicants further submit that no correspondence from the United States Patent and Trademark Office prior to the October 22, 2002 Supplemental Notice

of Allowability was ever received for the present application, namely the Filing Receipt. Accordingly, it appears that the non-receipt of the March 15, 2002 Notice of Allowance may have been due to the failure of the United States Patent and Trademark Office to properly enter Applicants Customer No. 020457 into their database for the present application, thereby requiring all correspondence to be mailed to the undersigned attorneys current address.

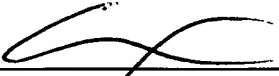
For the reasons discussed above, it is submitted that the Notice of Allowance mailed on March 15, 2002 was never received at the current address of the current offices of the undersigned attorneys nor was it ever received at the previous address of the previous offices of the undersigned attorneys.

Accordingly, pursuant to MPEP §711.02, it is respectfully petitioned that the holding of abandonment be withdrawn and that a new period for responding to the Notice of Allowance be reset so as to allow payment of the Issue Fee filed concurrently herewith, i.e., based on the rational set forth in Delgar, Inc. v. Schuyler, 172 USPQ 513 (DDC 1971).

The undersigned declares that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

To the extent necessary, Applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135 (Case No. 500.28503CC5) and please credit any excess fees to such deposit account.

Respectfully submitted,



Carl I. Brundidge
Registration No. 29,621
ANTONELLI, TERRY, STOUT & KRAUS, LLP

CIB/jdc
(703) 312-6600

Attachments:

Withdrawing the Holding of Abandonment
Computer Docket Sheet
June 15, 2002 Master docket page
Part B - Issue Fee Transmittal

(74)

Withdrawing the Holding of Abandonment
When Office Actions Are Not Received

The purpose of this notice is to announce a practice that will minimize costs and burdens to the practitioner and the Office when an application has become abandoned due to a failure to receive an Office action.

A petition to withdraw the holding of abandonment in accordance with *Delgar Inc. v. Schuyler*, 172 USPQ 513 (D.D.C. 1971) is burdensome to the practitioner since the practitioner must overcome a strong presumption that an Office action duly addressed and indicated as mailed was timely delivered to the addressee. To overcome this presumption, a practitioner is currently required to submit a persuasive showing that would permit the Office to conclude that the Office action was not received. Accordingly, evidence which is typically required includes: copies of records which would disclose the receipt of other correspondence mailed from the Patent and Trademark Office on or about the mail date of the non-received Office action, but fail to disclose receipt of the Office action mailed that date; copies of records on which the Office action would have been entered had it been received (e.g., a copy of the outside of the file jacket maintained by the practitioner); and verified statements from persons who would have handled the Office action (e.g., mail clerks, docket clerks, secretary, etc.).

In order to minimize costs and burdens to the practitioner and the Office when an application has become abandoned due to a failure to receive an Office action, the Office is modifying the showing required to make a petition to withdraw the holding of abandonment grantable. The showing required to establish the failure to receive an Office action must consist of a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail, e.g., if the practitioner has a history of not receiving Office actions. Two additional procedures are available for reviving an application that has become abandoned due a failure to respond to an Office Action: (1) a petition based on unintentional abandonment or delay; and (2) a petition based on unavoidable delay. See Manual of Patent Examining Procedure 711.03(c).

Oct. 25, 1993

CHARLES E. VAN HORN
Patent Policy and Projects Administrator
Office of the Assistant Commissioner
for Patents

[1156 OG 53]

OPER WSM ENTERED 7/25/2000 MODIFIED 11/16/2002 ATTORNEYS CIB / CIB / DKT PRINTED ON: 8/21/2003
 ATSK# 500.28503CC5 CNTRY US UNITED STATES NEW/CON CON RELATED 500.28503CC4
 PATS# P06227US3 TYPE UTL SERIAL# 09/625,542 PATENT# STAT PENDING
 TITLE MULTI-TONE DISPLAY DEVICE RL/FM
 CLIENT 500 ASAMURA PATENT OFFICE 1 CREF B5108-07 EO SE ART
 AGENT AREF CLAIMS 00226961
 PRIOR MAIL 7/25/2000 FILE 7/25/2000 PUBL ISSUE EXP 6/6/2015 1ST 6/6/1995

ID	O	ACTION	BASE	DUE IN	DUE	EXTNS	FINAL	EXT	RESPONSE	CALL	1	2	P
PC	N	POST CARD CHECK	7/25/2000	1 M	8/25/2000		8/25/2000	0	8/4/2000	0 M	N	N	Y
SX	Y	SUP NOT ALLOWABILITY	10/22/2002										
	Y	UPDATE REQUEST	10/25/2002										
	Y	NOT OF ALLOWBILTY	10/28/2002										
BY FAX													
	Y	NOT OF ABANDONMENT	11/18/2002										

PRIOR APPLICATIONS

REFERENCE#	CNTRY	SERIAL#	FILED	TITLE / DESCRIPTIO	TYPE
500.28503CC4	US	09/188,901	11/10/1998	MULTI-TONE DISPLAY DEVICE	APPL



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1670. 34450X00	5848958	main fee	DES	0cott
381. 34078X00	5848962	main fee	PJS	Dont pay
511. 32680EX1	5849213	main fee	DES	
503. 34230X00	58491670	main fee	WIS	
523. 34159VX1	5849861	main fee	WIS	
501. 34425X00	5850219	main fee	cdy	
017. 37906A00	30m. Nat'l Phase	CIB	(K+B)	6/13
017. 37624A00	"	"	DES (K+B)	5/3
520. 39861X00	Emori 803938	Dussupsee	ML	
"	"	Dussupsee	ML	
635. 38882X00	Wagner 641088	Dussupsee	WJS	APC
501. 39565X00	Aunara 803148	Dussupsee	gem	
"	"	Dussupsee	gem	
1117. 40455X00	Berbert 6059515	Dussupsee	CIB	
501. 38459X00	Asano 549085	Dussupsee	WALB	13
501. 39450X00	Nakayama 777544	Dussupsee	gem	
"	"	Dussupsee	gem	
500. 39772X00	Nakamura 763806	Dussupsee	ML	
"	"	Dussupsee	ML	
500. 33186EX5	- CCL6	IDS	gem	5/5
500. 36905VX1		IDS	CIB	WALB 5/30
500. 39799X00		IDS	ML	
500. 34370X00	5850601	main fee		
500. 39916VX0		IDS	CIB	
501. 39180EX1	Willaure 090738	assignee statement / consent assignee	ML	
500. 39772X00		file cont app	ML	
635. 40259X00	FF Due	KBS	no ff	
501. 39450X00	File Du. App	gem		
500. 33574EX1		Rep Rep	gem	✓ 6/4
501. 37977X00	file 3 cont app	ML		
500. 33704VX2	file cont app	ML		
520. 37911X00		IDS	ML	

6/17/02

PART B - FEE(S) TRANSMITTAL

Complete and mail this form, together with applicable fee(s), to:

Box ISSUE FEE
Assistant Commissioner for Patents
Washington, D.C. 20231

MAILING INSTRUCTIONS: This form should be used for transmitting the **ISSUE FEE** and **PUBLICATION FEE** (if required). Blocks 1 through 4 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Legibly mark-up with any corrections or use Block 1)

7590

03/15/2002

Antonelli Terry & Wands
 191 Pennsylvania Avenue N W
 Suite 600
 Washington, DC 20006



Note: The certificate of mailing below can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing.

Certificate of Mailing

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Box Issue Fee address above on the date indicated below.

	(Depositor's name)
	(Signature)
	(Date)

APPLICATION NO. 09/625,542	FILING DATE 07/25/2000	FIRST NAMED INVENTOR Hiroyuki Mano	ATTORNEY DOCKET NO. 10.28503CCS	CONFIRMATION NO. 6954
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TITLE OF INVENTION: MULTI-TONE DISPLAY DEVICE

TOTAL CLAIMS 9	APPLN. TYPE nonprovisional	SMALL ENTITY NO	ISSUE FEE \$1280	PUBLICATION FEE \$0	TOTAL FEE(S) DUE \$1280	DATE DUE 06/17/2002
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EXAMINER MENGISTU, AMARE	ART UNIT 2673	CLASS-SUBCLASS 345-089000
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1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363). Use of PTO form(s) and Customer Number are recommended, but not required.

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47) attached.

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

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3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) ☐ individual ☐ corporation or other private group entity ☐ government

4a. The following fee(s) are enclosed:

☐ Issue Fee☐ Publication Fee☐ Advance Order - # of Copies _____

4b. Payment of Fee(s):

☐ A check in the amount of the fee(s) is enclosed.☐ Payment by credit card. Form PTO-2038 is attached.☐ The Commissioner is hereby authorized by charge to required fee(s), or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

The COMMISSIONER OF PATENTS AND TRADEMARKS is requested to apply the Issue Fee and Publication Fee (if any) to re-apply any previously paid issue fee to the application identified above.

(Authorized Signature)

(Date)

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending on the needs of the individual case. Any comments on the amount of time required to complete this form should be sent to the Chief Information Officer, United States Patent and Trademark Office, Washington, D.C. 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND FEES AND THIS FORM TO: Box Issue Fee, Assistant Commissioner for Patents, Washington, D.C. 20231.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMIT THIS FORM WITH FEE(S)